



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

DEC 24 2012

**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Richard J. McDaniel  
11811 N. Tatum Blvd. #1051  
Phoenix, AZ 85028

RE: MUR 6537  
Jeff Flake for US Senate

Dear Mr. McDaniel:

The Federal Election Commission reviewed the allegations in your complaint received on February 29, 2012. On December 12, 2012, based upon the information provided in the complaint, and information provided by the respondent, the Commission decided to dismiss the complaint and close its file in this matter. Accordingly, the Commission closed its file in this matter on December 12, 2012.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003). A copy of the Factual and Legal Analysis is enclosed for your information. The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g (a)(8).

Sincerely,

Anthony Herman  
General Counsel

BY: Jeff S. Jordan  
Supervisory Attorney  
Complaints Examination and  
Legal Administration

Enclosure  
Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS: Jeff Flake for U.S. Senate, Inc.  
Hieu Tran as treasurer

MUR 6537

**I. INTRODUCTION**

This matter was generated by a Complaint filed by Richard J. McDaniel alleging violations of the Federal Election Campaign Act of 1971, as amended (the "Act"). It was scored as a low-rated matter under the Enforcement Priority System, a system by which the Federal Election Commission ("Commission") uses formal scoring criteria as a basis to allocate its resources and decide which matters to pursue.

**A. Factual Background**

The Complaint alleges that the Committee incorrectly reported earmarked contributions received through Club for Growth in the Committee's 2011 October Quarterly Report, filed on October 15, 2011 ("Original Report") and amended 2011 October Quarterly Report, filed on February 1, 2012 ("Amended Report"). Compl. at 1-2. In essence, the Complaint can be construed to allege that the Original Report, covering the period from July 1, 2011 through September 30, 2011, discloses conflicting information: "three separate earmarked contributions" from Club for Growth between July 15, 2011 and August 15, 2011 totaling approximately \$21,419; individual itemized earmarked contributions through Club for Growth during that time period that are lower ("only \$12,800"); and itemized individual earmarked contributions after that period.<sup>1</sup> *Id.* The Complaint can also be construed to allege that the Amended Report "raises additional questions" because: (1) the total of itemized earmarked contributions from Club for

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<sup>1</sup> The Complaint alleges that "the total amount of earmarked contributions received from the Club for Growth during the reporting period appears to be \$45,625." A review of the record indicates that the correct total, as reflected on the Original Report, is \$46,125.

1 Growth (\$46,325) is higher than on the Original Report; (2) individual itemized earmarked  
2 contributions during that time period are still lower than the approximately \$21,419 the  
3 Complaint identifies as the “three contributions” from Club for Growth; and (3) the Committee  
4 fails to disclose the correct dates on which the earmarked contributions were received. *Id.* The  
5 Complaint attaches a two-page document containing two columns of dates and amounts, one  
6 labeled “Original October Quarterly” and the other labeled “Amended October Quarterly.” The  
7 document is unsourced, and appears to suggest a discrepancy between the Original and Amended  
8 Reports. Compl, Attach. 1-2.

9 The Committee asserts that the Original Report accurately and completely disclosed the  
10 individual earmarked contributions but admits that the Committee incorrectly reported conduit  
11 contributions from Club for Growth on Schedule A, Line 11c (instead of Line 11a) of the  
12 Original Report. Committee Resp. at 1. The Committee states that it received a Request for  
13 Additional Information (“RFAI”) dated December 28, 2011, from the Reports Analysis Division  
14 (“RAD”) and immediately worked with its RAD analyst to correct the reporting errors in a  
15 timely manner. *Id.* at 2. The Committee asserts that the Amended Report correctly reported  
16 Club for Growth as a conduit on Schedule A, Line 11a and itemized additional contributions the  
17 Committee had since discovered met the \$200 aggregation threshold. *Id.* at 1. The Committee  
18 states that it will file a second amended 2011 October Quarterly Report “to correct the date  
19 reporting issue cited in this complaint,” *i.e.*, to “change the individual contribution receipt date  
20 from the date of the committee’s receipt of the funds to the date the Club for Growth PAC  
21 indicated it received the individual contribution,” and to correct other minor typographical and  
22 data entry errors. *Id.* at 3-4.

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**B. Legal Analysis**

Although the Committee's Original Report apparently disclosed individual earmarked contributions from Club for Growth, it failed to properly report all requisite information in connection with those conduit contributions. *See* 11 C.F.R. § 110.6(c)(2). Nonetheless, it appears that the Committee took corrective action by amending the Original Report.

Based on the facts presented and in light of the remedial action taken by the Committee before the Complaint was filed, the Commission exercised its prosecutorial discretion and dismissed this matter. *See Heckler v. Chaney*, 470 U.S. 821 (1985). Additionally, the Commission reminded Jeff Flake for U.S. Senate, Inc. and Hieu Tran in her official capacity as treasurer to properly report information concerning conduits when receiving earmarked contributions. Finally, the Commission approved the Factual & Legal Analysis, closed the file and approved the appropriate letters.

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